

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Hearing Date: The Board has not scheduled a public hearing on this proposed action.

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section(s) Affected: Title 16, Division 39, California Code of Regulations, Section 4144

Specific Purpose of Each Adoption, Amendment or Repeal:

The purpose of proposing California Code of Regulations Section 4144 is to establish and define Disciplinary Guidelines. Disciplinary Guidelines shall be used as a tool to assist attorneys, administrative law judges and the Board in making fair and consistent rulings throughout the State regarding appropriate sanctions for violations of the Occupational Therapy Practice Act (OTPA). The Disciplinary Guidelines provide minimum and maximum penalties for specific violations of the OTPA and offer standard and optional probationary terms when probation is determined to be the appropriate sanction. The Board recognizes that the proposed Disciplinary Guidelines are merely guidelines and if needed, they provide latitude for deviations in penalties due to the presence of mitigating factors.

Factual Basis/Rationale

Section 4144: Senate Bill 1244 (Figueroa, Chapter 1079, Statutes of 2001), grants the Board the authority to suspend, revoke, or place on probation the license or certificate of a person found to have engaged in unprofessional conduct. To be consistent and fair in determining the appropriate penalty for similar offenses, the Board must set forth, in regulation, disciplinary guidelines that specify minimum and maximum penalties for particular violations. Senate Bill 523 (Kopp, Chapter 938, Statutes of 1995) and Government Code 11425.50(e) provides that a penalty in an administrative disciplinary action cannot be based on guidelines unless they have been adopted as a regulation in accordance with the Administrative Procedure Act. To comply with the aforementioned provisions, the Board is proposing regulations to establish disciplinary guidelines by incorporating by reference, "Disciplinary Guidelines 2003."

When the Board makes a decision to go forward with formal disciplinary action, the offense is serious. If the Board is successful in proving its case, denial or revocation of the license may be warranted or a substantial penalty that will protect the public during the licensee's rehabilitation period. A thirty (30) day suspension and a probationary period of three (3) years is the traditional time frame for suspension and probation with the exception of sexually related crimes or violations or excessive force, mistreatment or abuse to the patients, which warrant a ninety (90) day suspension and five (5) year probationary period. These time frames have proven to be an effective tool in monitoring

a licensee's performance, send a message to the licensee that the offense was serious, and give a period in which to set up a rehabilitation plan, when applicable. To the extent that a licensee can demonstrate rehabilitation in a shorter period of time, he or she can petition for early termination of probation.

The Board is mandated to regulate the practice of occupational therapy in the interest and for the protection of the public's health, safety, and welfare. The Board has an active enforcement program, necessitating the establishment of disciplinary guidelines. The guidelines will assist attorneys, administrative law judges, and the Board in rendering fair and consistent disciplinary sanctions on a statewide basis.

Underlying Data

"Discipline Guidelines, December 2003"

Business Impact

These regulations will not have a significant adverse economic impact on businesses.

Description of alternatives which would lessen any significant adverse impact on business:

No alternatives were presented to or considered by the Board that would either be more effective than or as effective as and less burdensome on affected private persons.

Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternatives to the regulations would be either more effective in carrying out the purpose for which the actions are proposed or as effective and less burdensome on affected private persons than the proposed regulations.